

ATTACHMENT 3

If a carrier already has in use a circuit purchased from an ILEC pursuant to that ILEC's interstate or intrastate special access tariffs, that carrier is, by definition, not impaired in the offering of any service by virtue of not having that circuit available as an unbundled network element. Accordingly, no carrier may convert an existing tariffed special access circuit to an unbundled network element. This is the case regardless of the use to which the carrier currently puts the existing special access circuit or the use to which the carrier planned to put the unbundled network element if it had been permitted to convert such circuit. In addition, a carrier may not purchase a new unbundled network element that duplicates the functionality and end points of an existing tariffed circuit, transfer traffic to the new circuit, disconnect an existing circuit and then connect the new network element that duplicates the functionality and end points of the existing tariffed circuit where the disconnection of the tariffed service takes place within 90 days of the purchase of the unbundled network element.. The carrier also may not do the same through an intermediary carrier. A circuit for the purpose of this prohibition includes any part of a circuit; for example, a carrier purchasing an unbundled high-capacity loop-transport combination may not convert the loop portion of the circuit to an unbundled network element.

